

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RICHARD PAUL VILLANI,

Plaintiff,

CIVIL ACTION NO. 09-CV-12541

vs.

DISTRICT JUDGE AVERN COHN

**COMMISSIONER OF
SOCIAL SECURITY,**

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendant.

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REPORT AND RECOMMENDATION

RECOMMENDATION: The instant Complaint seeking judicial review of the Commissioner's decision to deny Plaintiff's claim for Social Security Disability Insurance Benefits should be dismissed pursuant to E.D. Mich. Local Rule 41.2 for failure to take action, failure to prosecute and lack of progress and pursuant to Rule 4(c), Fed. R. Civ. P., for failure to serve Summons and Complaint.

Plaintiff/claimant seeks review of the Commissioner's August 29, 2007 decision to deny his claim for Social Security Disability Insurance Benefits (DIB). (Docket no. 1). On April 22, 2009 the Appeals Council denied Plaintiff's request for review. (Docket no. 1). Plaintiff is represented by counsel and filed a civil action with this Court on June 26, 2009 seeking review of the denial of claimant's benefits. (Docket no. 1). On June 29, 2009 the Court issued two summons for service on the Commissioner of Social Security. (Docket no. 2). Plaintiff has not filed a proof of service with the Court as required by Rule 4(l), Fed. R. Civ. P. On November 30, 2009 the Court entered and served an Order Directing Plaintiff To Show Cause In Writing by December 11, 2009 why the

Defendant should not be dismissed from this action for Plaintiff's failure to serve the summons and Complaint within the time allowed under the Federal Rules of Civil Procedure. (Docket no. 4). Plaintiff did not response to the Court's Order to Show Cause.

Rule 4(c), Fed. R. Civ. P., requires that "[a] summons must be served with a copy of the complaint" and that "Plaintiff is responsible for having the summons and complaint served with the time allowed by Rule 4(m)" Fed. R. Civ. P. 4(c). Rule 4(m) provides that "[i]f a defendant is not served within 120 days after the complaint is filed, the court— on motion or on its own after notice to the plaintiff— must dismiss the action without prejudice against the defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). Local Rule 41.2 provides that "when . . . the parties have taken no action for a reasonable time, the court may, on its own motion after reasonable notice or on application of a party, enter an order dismissing or remanding the case unless good cause is shown." E.D. Mich. LR 41.2.

More than 120 days passed between the time the Complaint was filed and the time the Court ordered Plaintiff to Show Cause for his failure to serve the Summons and Complaint and Plaintiff was given reasonable notice that he needed to take action to comply with this Court's Order Directing Plaintiff to Show Cause In Writing. (Docket no. 4). To date, Plaintiff has not responded to the Court's Order, he has not shown good cause for the failure, he has not filed a proof of service and he has not taken further action on this case in any fashion. Accordingly, the Undersigned recommends that the instant complaint be dismissed and dismissing Defendant, including the dismissal of the only Defendant, for failure to serve summons and complaint pursuant to Rule 4 of the Federal Rules of Civil Procedure and for lack of progress, failure to prosecute and failure to respond to the Court's Order, pursuant to Rule 41.2 of the Local Rules.

REVIEW OF REPORT AND RECOMMENDATION:

Either party to this action may object to and seek review of this Report and Recommendation, but must act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing objections which raise some issues but fail to raise others with specificity will not preserve all objections that a party might have to this Report and Recommendation. *See Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Rule 72.1(d)(2) of the Local Rules of the United States District Court for the Eastern District of Michigan, a copy of any objection must be served upon this Magistrate Judge.

Within fourteen (14) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than five (5) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

Dated: March 5, 2010

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Report and Recommendation was served upon Richard Paul Villani and Counsel of Record on this date.

Dated: March 5, 2010

s/ Lisa C. Bartlett
Case Manager